Immigrants give America an entrepreneurial edge. In 1995 12 percent of the ''Inc.'' 500—a compilation of the fastest growing corporations in America—were started by immigrants. They also give us an edge in innovation. Immigrants make up nearly a third of all Ph.D.'s involved with research and development in science and engineering—the basis for innovation and economic growth.

Immigrants also fill needed roles, particularly in the engineering field. The CATO Institute reports that over 40 percent of our engineering Ph.D.'s are foreign-born, yet the unemployment rate in that field is only 1.7 percent. Clearly there is a gap in engineering in America that is being filled by immigrants.

I am pleased, then, Mr. President, that we did not close the door on immigrants seeking to come to this country to make a contribution and seek a better life. And I hope we will continue to keep the door open, so that we may live up to our heritage as a nation of immigrants, and so that we may continue to prosper.

Finally, Mr. President, abusive class action lawsuits have caused significant harm to high technology companies, as they have to much of the American economy. Some suits, alleging malfeasance on the part of company directors, have been brought within hours after a drop in a company's stock price.

Not long ago, this body successfully overrode the President's veto of legislation to reform securities litigation in this country. That bill will provide that discovery be stayed whenever a motion to dismiss is pending in a securities action. Discovery costs have been estimated to account for 80 percent of the costs of defending a lawsuit in this kind of action, and that is too much, particularly when the suit may be dismissed as without merit.

The bill also would create a modified system of proportionate liability, such that each codefendant in a securities action is generally responsible for only the share of damages that defendant caused. This should prevent companies from being joined to a lawsuit solely because of their deep pockets.

In addition, under this legislation, plaintiffs now must state facts with particularly, and state facts that give rise to a strong inference of intent on the part of the defendant. This should end the too-common practice of filing cases on the basis of few or no hard, relevant facts.

Finally, the bill contains a safe harbor provision protecting forward-looking predictive statements from liability.

Mr. President, we must go further, particularly in the area of legal reform, to protect our hi-tech industry from unwarranted interference. S. 1260, which I have cosponsored, would limit the conduct of securities class actions under State law. But even this is not enough.

Hi-tech and other companies are hit with all sorts of abusive lawsuits, not just securities litigation. That is why I am working for broader litigation reforms. I offered an amendment last Congress that would have expanded the joint and several liability provision of the product liability bill to cover all civil lawsuits. I also have introduced my own bill to protect small businesses from frivolous lawsuits. And I am working with Senator MCCONNELL to provide needed reforms to our civil justice system. It is my belief that we can make substantial progress in this area in the near future.

Finally, Mr. President, I would just like to note that, while antitrust laws must apply to new industries as they have to the old, we should not allow antitrust laws to become an excuse for excessive regulation. Hi-tech is a dynamic sphere of economic activity. Over-zealous Government regulation from Washington, by whatever means, will only hurt consumers, producers and workers. I think most hi-tech CEOs would agree that producers and consumers in the free market economy—not bureaucrats and politicians in Washington—should determine winners and losers in the high tech industry.

Frivolous lawsuits, unnecessary regulation and onerous taxation. Mr. President, all these actions threaten our high technology, information age industry. It is my hope that we can work together to lessen the chance that they will be imposed on an industry that is central to our economic well-being.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona [Mr. KYL], is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. KYL. Mr. President, I realize that the debate on the Labor-HHS conference report is supposed to begin at 1 o'clock.

I ask unanimous consent that Senator FAIRCLOTH and I each have 10 minutes as in morning business, subject to only Senator SPECTER changing that if he needs to during the course of our presentations. And, Mr. President, in addition, I ask that the Senator from Minnesota, Mr. GRAMS, have 5 minutes following Senator FAIRCLOTH.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MEDICARE BENEFICIARY FREEDOM TO CONTRACT ACT

Mr. KYL. Mr. President, I wanted to give a report to my colleagues on the status of the Medicare Beneficiary Freedom To Contract Act, the so-called Medicare private contracting issue, which has been before both the Senate and House for several weeks now following the adoption of the Balanced Budget Act, which contained in it a provision which makes it much more difficult for physicians to serve patients who want to contract outside of Medicare.

Let me briefly tell you what the problem is, the legislative status, and the resolution—at least as of now—that we have been able to accomplish.

The issue is whether or not physicians can serve both Medicare patients and people under private contracts who are 65 years of age. Once a person turns 65, of course, they are eligible for Medicare, and most of the services they can obtain are paid for by Medicare. But occasionally, either there is a service that is not covered by Medicare, or even sometimes services that are covered by Medicare that a patient would prefer to obtain from a physician outside of the Medicare Program.

For example, a constituent of mine had a condition that required the aid of a specialist in her small community. There were none available, except one person who was no longer taking Medicare patients. By the way, Mr. President, this is a common situation, because Medicare, especially for specialists, does not reimburse even up to their level of costs. So while many physicians don't want to dump their existing Medicare patient load and they want to continue to serve those patients they have been serving for a long time, they are not anxious to take on new Medicare patients. In this case, she went to the physician. He said he would be happy to take care of her, but he wasn't taking anymore Medicare patients. Her response was, ''Well, I will just pay you directly. You bill me, and I will pay you. That way Medicare will save some money, and I will get the treatment I need, and you won't have to take new Medicare patients.'' He found that the Federal Government would have deemed that to be a violation of law and, therefore, he would have been precluded from providing the services.

It was in response to that kind of a problem that we created a piece of legislation that would allow patients who are 65 years of age to have the right to go to the physician of their choice and to be treated outside of the Medicare Program, if that is their choice. We passed that legislation here in the Senate. It became part of the Balanced Budget Act. And, before the act was finalized, the President indicated his desire to veto that legislation if that provision were retained. As a result, some changes were made, the most important of which was to add a provision to the act which makes it virtually impossible for patients to actually have the benefit of that freedom of choice. The provision was that a physician providing such services had to opt out of all Medicare treatment 2 years in advance.

In other words, patients still had the right to go to a physician. But any physician that provided those services could not provide any Medicare services for a period of 2 years. That meant that it was virtually impossible then for physicians to serve these particular patients.

In an effort to try to resolve that, we introduced the Medicare Beneficiary Freedom of Contract Act. It has almost 50 cosponsors in the Senate, well over 100 cosponsors in the House version sponsored by the chairman of the House Ways and Means Committee, BILL ARCHER. We hoped that we would have the opportunity to get that passed before the end of this legislative session this year. It was not to be. People in the House of Representatives did not feel that they wanted to go forward with it under the constraints of time. There were some other issues. As a result, we did not push it as an amendment to one of the appropriations bills or other vehicles by which we could have done that here in the Senate.

Instead, I sought to proceed in a way that would enable us to ensure that we would make progress early next year on getting this issue resolved. Yesterday, I met with the President's nominee to head HCFA, Nancy-Ann Minn Deparle. She gave me a series of assurances of ways that they want to continue to work on this problem. I also received a phone call from Secretary Shalala providing the same assurances that we will be able to sit down and work with the administration to try to resolve this issue so that early next year we will be able to pass legislation that will solve this problem of Medicare-private contracting.

In addition to that, I received some assurances from Nancy-Ann Minn Deparle that the law that goes into effect on January 1 would not affect the provision of services not covered by Medicare. It would not affect the provision of service only partially covered by Medicare—on Medicare, for example, a second mammography beyond the annual mammography covered by Medicare. It would not affect the provision of care under the Medicare Plus Choice Plan, the Medical Savings Account option, and it would not affect the ability of other physicians in a group practice to treat Medicare beneficiaries when a patient makes a private contract with one of the group practitioners.

We worked on some of the other problems relating to this in addition to try to develop legislation next year that will be approved by the House and Senate and the administration. I will report more on the progress of this after a while.

I would like to introduce into the RECORD two items that came to my attention this morning. One, a copy of three letters that were published.

Mr. SPECTER. Mr. President, if my colleague will yield, I inquire: How much time does the Senator intend to use?

Mr. KYL. I am finishing right now.

I ask unanimous consent to have printed in the RECORD the text of three letters carried in the New York Times on Friday, November 7, and a copy of an editorial in the San Francisco Chronicle, and the date is November 6, 1997.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Nov. 7, 1997]

HEALTH CARE IS TOO IMPORTANT FOR PARTISANSHIP

To the Editor:

''Move Under Way to Try to Block Health Care Bills'' (front page, Nov. 4) points up that health care reform is again being treated as a partisan issue rather than the bipartisan issue it should be. The health care system is in critical condition.

Costs are rising at twice the rate of inflation and will double in the next 10 years. The number of uninsured—estimated to be between 41 million and 44 million—is increasing by a million a year, and the quality of care continues to erode.

Competition and managed care have been promoted as solutions, yet the marketplace has done little to stem long-term cost, quality and coverage problems, which show no sign of abating.

Opponents of reform being considered in Congress contend that the proposals would increase costs even more and drive more people out of health coverage.

Yet without change in the way we deliver and pay for health care, costs will rise more rapidly and the number of uninsured will grow larger.

Partisan posturing only aggravates the problems for all Americans.

HENRY E. SIMMONS, M.D.,
Pres., Natl. Coalition on Health Care.

KYL PROPOSAL ISN'T NEW

To the Editor:

''Republican Health-Care Mistakes'' (editorial, Nov. 5) overlooks that the wording of the bill sponsored by Senator Jon Kyl, which would allow Medicare patients to pay doctors more than Government-set rates, would only preserve and codify the status quo.

The Medicare law and its amendments never forbade contracting between physicians and beneficiaries outside of Medicare. It was the heavy hand of the Health Care Financing Administration that articulated the draconian regulations forbidding outside contracting. A 1992 court decision (Stewart v. Sullivan) was moot on the subject of outside contracting, effectively allowing it.

Consequently, we have already had Medicare outside contracting without all of the hazards you predict: illegal double billing of both the patient and Medicare, a two-tier system of care and unequal bargaining between physician and patient. You propose to fix the functional status quo with one that decrees loss of individual freedom of choice at a moment when life and death decisions may be crucial.

ROBERT L. SOLEY, M.D.

COMPETENT AT 65

To the Editor:

Re ''Republican Health-Care Mistakes'' (editorial, Nov. 5): You miss the point of the Kyl amendment. There are 65-year-olds more than able to negotiate on their own behalf and who feel demeaned when the Government robs them of the right. Why deny them the same rights that they had the year before they turned 65?

The low regard for the integrity of physicians your editorial expresses is offensive. In spite of all the chaos in the health care sector, the primary reward of the physicians I speak with comes from helping patients.

Do you really think the typical physician is bent on defrauding people?

HERBERT S. GROSS, M.D.,
Clinical Professor of Psychiatry,
University of Maryland.

[From the San Francisco Chronicle, Nov. 6, 1997]

FREEDOM OF CHOICE ON MEDICAL CARE

The Balanced Budget Act of 1997 was supposed to give elderly patients greater freedom of choice on medical care. But it stopped short of offering genuine choice. Here's the situation.

Under current rules, doctors are prohibited—criminally prohibited—from charging Medicare patients more than the amounts permitted by the government, even if the patients are willing to pay the money out of their own pocket. These restrictions have kept Medicare patients from being able to use their own money to see doctors—even specialists—as they choose.

This restriction is all the more onerous for patients because so many doctors have become disenchanted with Medicare, which reimburses at about 70 percent of the rate of private insurers. As a result, some senior citizens have trouble finding a doctor willing to take them.

Recognizing the problems with the restrictions, Congress recently voted to allow Medicare beneficiaries the option to privately contract with doctors for any service at any price—with one caveat.

And that caveat, insisted upon by the Clinton administration, is a whopper that effectively undermines the patient's freedom of choice. The Clinton-pushed amendment to the bill provides that any physician who enters into such a private contract cannot receive any Medicare reimbursement for two years. Those new rules go into effect January 1.

Senator Jon Kyl, R–Ariz., has introduced legislation (S. 1194) that would get rid of the two-year restriction on doctors who enter into the private contracts. His plan to open up choices for Medicare patients has encountered intense opposition from powerful groups, notably the American Association of Retired Persons.

Defenders of the status quo argue that Medicare patients have no shortage of choices. ''The idea that doctors don't take Medicare patients is fallacious,'' said Representative Pete Stark, D–Hayward, a longtime advocate of universal health care. Stark maintains that a private-payment option would create a two-tiered system—''boutique health care'' for the wealthy, while Medicare would be left to tend to the poorest and the sickest.

There is a little problem with the all-is-well premise of those who oppose the Kyl bill. If Medicare really did offer satisfactory choice and service for beneficiaries, then none of them would want or need to dig any deeper into their pockets for medical care.

This issue also involves a matter of privacy—which is why the American Psychiatric Association strongly supports the Kyl bill. Medicare covers 50 percent of the cost of psychotherapy, but some patients would rather pay the full freight in order to avoid the government's ability to review their claims, said the APA's Jay Butler.

Medicare patients deserve a chance to decide for themselves what kind of care they want, and whether they are willing to pay for it.

Mr. KYL. With that, Mr. President, I will complete this at another time since I know Senator SPECTER wants to move forward.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Arizona. I had sought a time determination because we have 90 minutes

on the bill and are scheduled to vote at 2:30. The way our colleagues work, people will be ready to depart for trains and planes at 2:29.

So if the clerk will report now, I know that there are other Senators who wish to speak and there will be time to speak during the 90-minute time. Then by unanimous consent we can go into morning business. But I request that we proceed at this time to the consideration of the conference report on Labor-HHS and Education.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the clerk will report the conference report to accompany H.R. 2264.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264), have agreed to recommend and do recommend to their respective Houses this report, signed by majority of the conferees.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 7, 1997.)

Mr. SPECTER. Mr. President, parliamentary inquiry. I ask for confirmation from the Chair that we are now on the conference report having begun at 1:05 with the 90-minute time limit so that we will vote no later than 2:35.

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. I thank the Chair.

Mr. President, it is with great pleasure for me personally that I address the Senate on the conference report on the appropriations bill for the Departments of Labor, Health and Human Services, and Education.

It has been a long, tortuous road to come to this position where if the Senate acts favorably on this conference report, it may then be presented to the President with the expectation that it will be signed into law.

There are 13 appropriations bills which run the U.S. Government, and the appropriations bill on these three departments is the largest one in the Federal Government, downsizing of some $277 billion, and it is now larger even than the appropriations bill for the Department of Defense.

This bill has had a very, very difficult process in coming through conference with a tremendous number of obstacles and difficulties confronting the legislative process at every step of the way.

The process that this conference report has come to the floor with would perhaps constitute a textbook on legislative process except that it has been so extraordinary. That has been occasioned by the fact that there are so many so-called riders or legislative provisions on the appropriations bill which have enormously complicated the work of the conferees in trying to work out an enormous number of complicated problems.

The most vexing of all of the issues—and it had a lot of competition—was the issue on so-called testing. There has been a generalized agreement that it would be desirable to test fourth graders on reading and eighth graders on mathematics but a great deal of disagreement as to how that testing ought to be carried out. There has been widespread sentiment expressed that the Federal Government ought not to be intrusive in the educational process. Then the problem arises as to just how this test would be worked out.

When the bill came to the floor of the Senate, the excellent work was done by Senator COATS of Indiana, Senator GREGG of New Hampshire, with the assistance of former Secretary of Education Bill Bennett. In the hands of those three individuals, with the established record in the education field, great knowledge on testing, and all being very zealous to keep out Federal intrusion but to limit any testing approach to absolute necessity and to State control, it was the expectation of this body that when Senator COATS, Senator GREGG, and former Secretary Bennett agreed on a process, that it would satisfy even those most diligent in objecting to Federal testing. The Senate passed that amendment by a vote of 87 to 13, which is a very, very strong show of support in this body.

The House of Representatives enacted a provision that there should be no funds on testing. When we came to the issue of conference a week ago Wednesday, a meeting occurred attended by the top leadership of the Republican Party of the House and the Senate, attended by the Speaker; by the House majority leader; by the No. 3 in rank in the House of Representatives, Mr. DELAY; the chairman of the House Appropriations Committee, Mr. LIVINGSTON; and the chairman of the House Appropriations Subcommittee, my counterpart, Congressman JOHN PORTER. And on the Senate side, we had our own majority leader. We had the chairman of the Appropriations Committee. And I was present.

We agreed on a number of items. One of the foremost of those items on which there was agreement was the issue of testing. There was one party present who disagreed. That was the chairman of the authorizing committee in the House, my colleague from Pennsylvania, Congressman GOODLING. But aside from Congressman GOODLING's dissent, there was agreement at that meeting.

A week ago Thursday the conferees met and hammered out quite a number of other complicated issues and came to agreement on a conference report. That night the agreement was repudiated, and we were back to square one with respect to the testing issue, which held up this bill until further negotiations were undertaken by the President and by Congressman GOODLING. The testing issue has finally been resolved. A key part of the agreement on testing is that the matter will be submitted to the House-Senate authorizers early next year.

This is one illustration as to what ought to be done by the authorizing committees so that the matters are not put on appropriations bills and bog down the appropriators.

There was plenty of time during 1997 to have this issue of testing taken up by the authorizers. It really is a matter for the authorizers to make the congressional determination about what testing ought to be instead of tacking it onto an appropriations bill where it really does not belong. It is grafted onto the appropriations bill with this language, ''No funds shall be expended for testing.'' That is the way many, many substantive matters were grafted onto the appropriations bill. ''No funds shall be expended for'' purpose A, B, or C.

When it became apparent to me that this issue was going to be one in the appropriations process after this bill was on the floor for initial consideration by the Senate, I scheduled a hearing. At the hearing, we heard both sides of the issue. The Secretary of Education came forward to articulate the administration's position on why there should be testing. We invited Congressman GOODLING to present his views about why there should be no testing. After having had the benefit of that information, we then were in the position to proceed as best we could on that limited record to make the judgment on testing.

We had in the conference many other complex issues that we finally worked out. We had the amendment offered by the distinguished Senator from Washington, Senator MURRAY, on the issue of not restricting welfare benefits to women who had been victims of domestic violence. That is a substantive matter that would be better considered by the authorizers. But it passed in the U.S. Senate by a vote of 98 to 1. At least, in my judgment, and the judgment of 97 other Senators, it had a very important public policy purpose, to give special consideration on welfare benefits and other matters for women who had been victims of domestic violence. Senator MURRAY was gracious to not press her amendment in conference, on an arrangement where the House of Representatives authorizing subcommittee made a commitment to take up the issue early next year. I was delighted to join Senator MURRAY as a cosponsor on that matter.

That is one illustration of how we moved ahead to focus on money matters without that kind of a substantive provision.

PRIVILEGE OF THE FLOOR

Mr. President, at this time I ask unanimous consent that Mr. Jim Sourwine and Ellen Murray, detailees to the committee, be granted floor privileges during the consideration of